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THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

QUESTION OF THE HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Report of the Secretary-General

Information submitted by Governments pursuant to Sub-Commission resolution 7 (XXVII) of 20 August 1974

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INTRODUCTION

1. The Sub-Commission on Prevention of Discrimination and Protection of Minorities in paragraph 1 of its resolution 7 (XXVII) of 20 August 1974 decided to review annually developments relating to the human rights of persons subjected to any form of detention or imprisonment, taking into account any reliably attested information from Governments, the specialized agencies, the regional intergovernmental organizations and the competent non-governmental organizations in consultative status with the Economic and Social Council. In paragraph 2 of that resolution the Sub-Commission requested the Secretary-General to transmit to it the information referred to in paragraph 1.

2. Pursuant to that resolution, the Secretary-General requested information from all States, the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization, the United Nations High Commissioner for Refugees, the Council of Europe, the Intergovernmental Committee for Migration, the International Criminal Police Organization (INTERPOL), the League of Arab States, the Organization of African Unity, the Organization of American States, as well as non-governmental organizations concerned.

3. The present document contains the replies received from Governments up to 30 June 1990. Any further information received from States will be reproduced in addenda. The information submitted by specialized agencies and intergovernmental organizations and the synopsis of material received from non-governmental organizations in consultative status with the Economic and Social Council will be submitted separately in documents E/CN.4/Sub.2/1990/... and E/CN.4/Sub.2/1990/... .

READEX
FICHE

BAHAMAS

[Original: English]
[20 February 1990]

(A) Death during detention, extrajudicial executions and other arbitrary or summary executions

1. The Superintendent of Prisons has advised that in 1989, two inmates of Her Majesty's Prison died from natural causes while incarcerated. With respect to extrajudicial executions and other arbitrary or summary executions, none have occurred in the Bahamas.

(B) Capital punishment, including the execution of juvenile offenders

2. The death penalty is imposed for persons found guilty of murder and treason. The last hanging in the Bahamas took place in 1984.

3. With regard to juvenile offenders, by virtue of section 41, The Children and Young Persons (Administration of Justice) Act (Chap. 90), the sentence of death in the case of children and young persons (under 18) has been abolished. There are no known cases of any juveniles prior to this time who received the death penalty.

(C) Unacknowledged detention, enforced and involuntary disappearance

4. This is non-existent.

(D) Torture and other cruel, inhuman or degrading treatment or punishment

5. Article 17 (1) of the Bahamian Constitution clearly states that no person shall be subjected to torture or to inhuman or degrading treatment or punishment. There have been no reported cases in the Bahamas of torture or inhuman treatment or punishment.

(E) Detention and ill-treatment of members of vulnerable and other groups, such as children, trade-unionists, human rights defenders, parliamentarians, journalists and peasants

6. There have been no incidents of detention of such groups. However, occasionally there is an influx of illegal immigrants, which leads to a problem of overcrowding in the detention centres and in prison.

(F) Restraints on the use of force by law enforcement officials

7. The law seeks to protect all individuals against inhuman treatment. In the case of criminal proceedings, if an accused person states that force was used to obtain a confession of guilt, section 23 of The Evidence Act (Chap. 52)

states that no evidence shall be given of any confession in any criminal proceeding if the confession appears to the Court to have been obtained by any inducement, threat or promise proceeding from the prosecutor or from some other person having authority over the prisoner.

8. Further, recourse through the court system may be obtained where persons have alleged the use of force by law enforcement officials. Also internally, that is, in the police force itself, officers accused of such actions may be brought before a court of inquiry where these accusations are looked into and officers are disciplined accordingly.

BAHRAIN

[Original: English]
[19 February 1990]

The competent authorities in the State of Bahrain affirm their adherence to the Bahrain Constitution, and apply the laws promulgated by the concerned authorities in order to guarantee respect for human rights of persons subjected to any form of detention or imprisonment. No violations of human rights or of those laws promulgated to guard them have occurred in the State of Bahrain.

BRUNEI DARUSSALAM

[Original: English)
[13 March 1990]

The Government of Brunei Darussalam has no further information to convey, apart from the death of one detainee, Sh. Mohammad bin Sh. Mahmood, of natural causes, at the General Hospital on 9 June 1988.

BURUNDI

[Original: French]
[31 March 1990]

1. Burundi is concerned about human rights in general and the rights of persons subjected to any form of detention or imprisonment in particular.

2. The 1981 Constitution which is currently suspended, the Code of Criminal Procedure and the Criminal Code, reflect that concern. The Constitution of Burundi, which draws heavily on the Universal Declaration of Human Rights, recognizes a whole range of individual freedoms that are taken to be fundamental.

3. Examples of these are respect for and protection of the human person, freedom of the individual and the right to defence in court and the right to travel freely and to settle anywhere in the national territory.

4. Although officers of the judicial police and magistrates of the Office of the Public Prosecutor are recognized as having the power to coerce and arrest, abuses of such power are under no circumstances tolerated. Article 171 of our Criminal Code, for example, lays down severe penalties, which range from 1 to 20 years' imprisonment for anyone responsible for arbitrary arrest or detention or subjecting any prisoner or detainee to torture.

5. Any person arrested or detained is entitled to be informed of the reasons or grounds for his arrest or detention. The Code of Criminal Procedure, article 27, stipulates the circumstances under which a person may be put in detention, and article 28 makes it mandatory for the signatory of a provisional arrest warrant to state clearly the justification for such detention.

6. Although the Code of Criminal Procedure prescribes the period during which a person may be held in pre-trial detention, owing to problems of material and human resources, some detainees have been held for longer than the prescribed time.

7. The magistrates, ever conscious of the valuable advice given by the Head of State in his speech outlining his programme, have made strenuous efforts to conform to the principle of presumed innocence embodied in our positive law. It should be recalled that a special commission was set up at the end of 1989 and that 1,050 prisoners accused of minor offences were released provisionally.

8. Anyone brought before a court is entitled to be tried in the presence of the counsel of his choosing.

9. The accused is also entitled to be examined and to have witnesses on his behalf appear and be examined under the same conditions as witnesses for the prosecution, to have the assistance of an interpreter, and not to be compelled to testify against himself or to confess guilt.

10. Two characteristics of the courts of Burundi are independence and impartiality. Accordingly, firm guarantees such as the collegial structure, remedies and impugnment are available to the accused.

11. The universal principle, "nullum crimen, nulla poena sine lege" is embodied not only in the Constitution, but also in the Criminal Code of Burundi, Book I, article 2, of which states: "no offence may be punished by a penalty which was not sanctioned by the law before the offence was committed". The same provision embodies the principle of the non-retroactivity of criminal law.

12. There is, therefore, not the slightest doubt that the concerns of the Sub-Commission on Prevention of Discrimination and Protection of Minorities are shared by the legal authorities of Burundi. These authorities have no objection to the proposed visits provided that they are prompted by purely humanitarian motives and lead to specific and, above all, reasonable proposals. Furthermore, the fact that the International Committee of the Red Cross has been able to make regular visits to the various places of detention is proof of the good faith of our legal authorities.

COLOMBIA

[Original: Spanish]
[22 January 1990]

1. In this connection, I should like to draw attention to a number of specific points.

2. The question of death during detention: Colombia's prison and penitentiary legislation contains clear and precise provisions, not only for the procedure to be followed in the event of natural or violent death, but also in the case of illness of persons deprived of their liberty.

3. Articles 166 to 174 of Chapter III of Decree-Law No. 1817 of 1964 (Prison Regulations in force) govern the appropriate procedure in the case of death of an inmate, regardless of the cause. The regulations stipulate that the costs involved in official action shall be met by the Prison Administration. Precise standards are also established for due diligence in processing the personal effects of the deceased person. In addition to the legislation mentioned above, articles 263 to 268 of Chapter II of the same regulations relate to mentally-deranged persons subjected to security measures and to convicted persons. It should be pointed out that, as part of the policies designed by the Directorate-General for Prisons of Colombia, there has been an ongoing concern to achieve strict compliance with the provisions elaborated in international forums for making detention and sentence-serving dignified and humane. This has been reflected in certain legislative and administrative decisions, the holding of specific events and supervision and monitoring by the services and officials attached to the Directorate.

4. The death penalty, including the execution of juvenile offenders: this question does not apply, since Colombia abolished the death penalty once and for all in 1910.

5. The death penalty was applied during a large part of the nineteenth century. Article 15 of the 1863 Constitution recognized "the inviolability of human life", for which reason the Federal and State Governments undertook not to prescribe the death penalty in their laws. It was, however, restored under the régime of General Rafael Núñez. The original article 29 of the 1886 Constitution provided for the possibility of the death penalty for persons guilty of treason, parricide, murder, arson, assault in criminal gangs, piracy and certain military offences.

6. Some years later, as part of the constitutional reform of 1910, the death penalty, which had been maintained until then, was prohibited. Thus, the current article 29 of the Political Constitution of Colombia stipulates: "The lawmaker may in no case prescribe the death penalty". The provision contained in article 29 is to Colombia's credit, since it places it among those countries which, for humanitarian and criminal policy reasons, have banished this aberrant legal act from their penal codes.

7. Torture and other cruel, inhuman and degrading treatment or punishment: article 279 of the Colombian Penal Code provides as follows: "Any person who inflicts physical or mental torture on another shall be liable to imprisonment for a term of one (1) to three (3) years, provided that the act does not constitute an offence punishable with a severer penalty.

8. The wording of this provision embodies a broad notion of "torture" and allows for the imposition of different penalties if the unlawful act committed conforms to the definition of an offence punishable with a severer penalty. This category includes offences against the freedom of the individual and in violation of other rights, as specified in Title X of the Penal Code, and offences against the life and integrity of the person, provided for in Title XII.

9. At present, and as long as the state of siege lasts, jurisdiction over the offence of torture lies with the Courts of Public Order at first instance and the Superior Court of Public Order at second instance. The existence of the two instances is a clear guarantee of the proper administration of justice.

10. In addition, the new Penal Code for the Armed Forces provides as follows: "Any person who inflicts physical or mental torture on another shall be liable to imprisonment for a term of one to three years, provided that the act does not constitute an offence punishable with a severer penalty"; this rule applies to members of the armed forces on active service committing an unlawful act connected with their duties. Moreover, while this provision contemplates the existence of offences analogous to those provided for under the general law, it constitutes a real innovation in legislating for the offence of torture in military law; it has been in force since 12 December last, when the Government issued Decree No. 2550 of 1988 promulgating the new Penal Code for the Armed Forces.

11. The new rules of military criminal justice also entail compliance with international treaties relating to the treatment of prisoners; their scope extends to all members of the armed forces and the police who commit military or general offences connected with their duties in Colombia or elsewhere, except as provided under international law.

12. Thus article 169 of the new Code provides for imprisonment for a term of one to five years for persons committing offences against international law regarding use of prohibited weapons, treatment of prisoners and conduct in battle. This rule provides for the trial of persons who mistreat a prisoner physically or mentally or misappropriate his belongings.

13. In view of the need to prevent inchoate offences and joint offences from going unpunished, the general criminal law of Colombia contains provisions which relate to such situations, and which are of course applicable to every kind of offence, including torture. In doing so, it extends the scope of offences under the general law and makes an effective contribution to preventing impunity: in the case of inchoate offences, by widening the ordinary scope of the offence to include behaviour which takes place prior to the commission of the offence, and in the case of joint offences by providing for conduct by one or more persons which does not amount to the commission of the offence itself; in both cases, the law warns of the specific legal consequences involved.

14. In regard to inchoate offences, article 22 of the Penal Code provides as follows:

> "Any person who embarks on the commission of a punishable act by means of conduct which is capable of completing that act and is mistakably intended to do so shall, where the act is not completed owing to circumstances beyond that person's control, incur a penalty of not less than one half of the minimum and not more than three quarters of the maximum penalty prescribed for the commission of the offence."

15. Thus, in Colombian criminal law, for an inchoate offence to exist, the commission of a punishable act must be begun by appropriate and intentional conduct on the part of the person engaging in it and fail to reach completion against that person's will. If these circumstances exist in connection with the offence of torture, the perpetrator of the inchoate offence will be liable in accordance with the prescribed rules of law.

16. In regard to joint offences, Colombian criminal law provides for perpetration, incitement, participation and complicity. Articles 23 to 25 of the Penal Code provide as follows in this respect:

> "(a) Article 23. Principals. Any person who commits a punishable act or incites another person to do so shall incur the penalty prescribed for the offence;
>
> (b) Article 24. Accomplices. Any person who aids the commission of a punishable act or subsequently renders assistance in fulfilment of a promise made prior to its commission shall incur a penalty of not less than half and not more than five sixths of the penalty prescribed for the offence.
>
> (c) Article 25. Attachment of circumstances. Circumstances personal to the perpetrator of the act which increase punishability and circumstances material to the act shall attach to an accessory who has knowledge of them."

17. Personal circumstances which mitigate or relieve punishability shall not be taken into account except in regard to an accessory to whom they attach or whose acts were determined by those circumstances.

18. Arrest and detention without justification or for ill-defined or dubious reasons: to give effect to the guarantees established by the Constitution and the laws for persons under detention, the Office of the Attorney-General of the Nation ordered a card to be drawn up setting out all the rights of the detainee; this card must be read out whenever an arrest is made. The card will be distributed to over 10,000 officials of the Judicial Police throughout the country and is one more instrument for guaranteeing the due observance of arrested persons' rights by police officials.

19. The following rights are indicated on the card: to be treated with due respect for the dignity of the human being; to be informed of the reasons for the arrest and the official who ordered it; to have an interview with a lawyer; to have a person of his choice informed of the arrest; to give his own version of the acts with which he is charged to the examining magistrate in

the presence of a defence lawyer; to remain silent concerning the charges; in cases of arrest flagrante delicto, the right to be brought before the competent judge within the time allowed for appearance; to be examined by a doctor if he so requests; to receive food, bedding, toilet articles, clothing and reading matter.

20. Once the arrest has taken place (flagrante delicto or by judicial warrant), the Judicial Police shall immediately inform the competent judge of the circumstances under which it took place, specifying the identity of the arrested person and his whereabouts.

21. In no case may the Judicial Police invoke incommunicado detention in response to an official of the Public Prosecutor's Department.

22. Limitations on the use of force by law-enforcement officials: article 55 of Decree No. 1817 of 1964 (Prison Regulations in force) stipulates that "Wardens shall take all legal measures to ensure that detention and penalties involving deprivation of liberty, shall, in all cases, provide accused and convicted persons with an opportunity for moral regeneration and social rehabilitation and shall subordinate the entire operation of the establishment in their charge to this objective".

23. According to article 90, "in no case may warders inflict punishments on prisoners, or use violence or ill-treatment against them. When a warder who is not authorized to punish prisoners finds it necessary to impose his authority on a prisoner, he shall place the prisoner in incommunicado detention and so inform his superior without delay".

24. Article 49, paragraph B (11), of Decree No. 2655 of 1973 qualifies as a serious offence with grounds for dismissal: "physically ill-treating prisoners and imposing on them punishments that are not prescribed in the regulations".

25. Privatization of prisons: the process of privatizing basic services within the prison organization has been occurring as part of a plan to improve the living conditions of the prison population, without allowing the process to have an undue impact on the basic and essential elements of the nature of the institution.

26. This process has been applied, inter alia, to the following aspects:

(a) Catering services. In the main prison centres in the country, catering is now carried out by private enterprises and this measure has led to a noticeable improvement in the quality of the food;

(b) Associating private enterprise with the skills available inside prisons: for the twofold purpose of associating society as a whole with the process of social rehabilitation and increasing the use of prisoners' skills, attempts are being made to associate companies and private individuals with the skills available in prison, on the basis of article 182 of Decree Law No. 1817 of 1964 (Prison Regulations).

FINLAND

[Original: English]
[5 April 1990]

1. At the beginning of May 1989 an amendment (344/1989) to the Act on Damages for Deprivation of Freedom to Be Paid from the State Funds to Persons Imprisoned or Sentenced without Cause entered into force. This means that persons arrested, imprisoned or sentenced without cause are entitled to damages for pain and suffering even without specific grounds therefor. Furthermore, a person under prohibition to travel is entitled to damages for limitation of freedom. The criteria for the payment of damages specify that a person sentenced by a court of justice for a crime not subject to arrest and imprisonment is entitled to damages for limitation of freedom notwithstanding that a more severely punishable act under the same charge is subject to arrest and imprisonment.

2. The Act on the Adoption of Certain Provisions in the Convention on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (828/1989) was passed by decree (829/1989) on 29 September 1989. In the same context the Act on Amending the Penal Code (655/1989) entered into force 1 September 1989, whereby the Penal Code became consistent with certain provisions of the before-mentioned Convention. Under the thus amended law, acts punishable as torture under the Convention shall be punishable under Finnish law irrespective of the law of where the act has been committed and even when committed by an alien outside Finland.

3. Under an act which entered into force at the beginning of 1990 (992/1989), offenders under the age of 18 shall not be sentenced to unconditional imprisonment without a particularly serious reason. Under another act of the same date (993/1989), a young offender serving a sentence in a juvenile penitentiary may be transferred to an open institution for a fixed period or the remainder of the sentence, if deemed appropriate for rehabilitative reasons. In such cases the young offencer shall have the same benefits as adults serving in an open institution, such as wages, without losing the special treatment afforded to young offenders.

4. In January 1990 a Government bill (HE 251/1989vp.) was submitted to amend the Act on Coercive Measures (450/1987) which has been in force since the beginning of 1989. The bill proposes to reduce the maximum duration of arrest so that the court would be obliged to treat the matter promptly and no later than four days after arrest.

5. If adopted, this clause would enable Finland to withdraw its reservation in respect of Article 9, paragraph 3 of the United Nations Covenant on Civil and Political Rights. Subsequent to the amendment, Finnish law will be consistent with the provisions of the European Convention on Human Rights in respect of criminal procedure and deprivation of freedom.

6. The Ministry of Justice has established a working party to draft a bill on the basis of a committee report of 21 December 1989 on the amendments required in Finnish law following the adoption by Finland of the European Convention on Human Rights.

JORDAN

[Original: Arabic]
[19 February 1990]

The Jordanian Constitution and the laws in force in the Kingdom diligently safeguard all aspects of human rights. In fact, the Constitution stipulates that there must be no discrimination among Jordanians in regard to their rights and duties, all Jordanians being equal before the law. The Constitution further stipulates that personal freedom must be fully safeguarded in a manner consistent with public ethics and morality, within the limits of the law.

With regard to the matters discussed in the field of human rights in 1989:

1. Concerning the question of death during detention, article 8 of the Constitution stipulates that: "No person shall be detained or imprisoned except in accordance with the provisions of the law". Jordanian law applies the principle that there is no crime or punishment other than those legally defined as such. Under article 208 of the Penal Code, anyone who subjects a person to any form of violence or coercion prohibited by law is liable to a penalty of imprisonment for a term of 3 months to 3 years and, if such an act of violence or coercion leads to sickness or injury, the penalty is imprisonment for 6 months to 3 years, unless the act in question calls for a more severe penalty.

Accordingly, it is evident that anyone who causes the death of any person in detention or under arrest is legally answerable for the crime of murder or manslaughter, depending on the circumstances of the death. Detainees are held in custody only for a limited period of time, during which they must be sent for trial.

2. The death penalty: like the laws of most countries of the world, Jordanian law makes provision for the death penalty, although it is restricted to specific offences defined in the Penal Code, such as treason in time of war and the commission of heinous crimes. Before the sentence is carried out, it must pass through several procedural stages, including the Court of Appeal and the Court of Cassation, and must be approved by the highest State authority.

3. With regard to unannounced detentions, the detention and ill-treatment of members of trade unions, children, members of human rights organizations, members of Parliament, journalists and farmers and arrest or detention without cogent reason, the Constitution stipulates that no person can be detained or imprisoned except in accordance with the provisions of the law. In other words, no person can be arrested, detained or punished without legal justification. Since the laws and regulations in force are in conformity with the provisions of the Constitution, it is evident that there can be no unjustified arrests or detentions. Practical experience shows that there have never been any unannounced detentions at any time in the Kingdom's history, since the personal freedom of every Jordanian citizen is guaranteed. Likewise, there has never been any persecution, psychological intimidation, physical torture or cruel, degrading or humiliating interrogation, since these are matters relating to the integrity of the human person. The provisions of the law carefully avoid any distinction or discrimination among citizens. Under the laws in force in the Kingdom, anyone who has been assaulted or

abused without legal justification has the right to institute court proceedings against the person or persons responsible. Even administrative decisions taken by Government departments in the Kingdom have formed the subject of appeals to the Supreme Court, which has jurisdiction in this field.

4. There have never been any cases of administrative detention without charge or trial. Persons can be held in detention only in accordance with the provisions of the law and until a final judgement is handed down by the judicial authorities. There have never been any cases of enforced disappearance in our country.

The persons who had been detained or convicted in connection with political offences have been released. The Government is currently endeavouring to gradually revoke the directives issued under martial law, and it is hoped that this process will be completed in the very near future. The official orders prohibiting all forms of torture or ill-treatment of any person are being diligently enforced and all the organs of the State have shown an exemplary commitment in this regard.

In the prevailing atmosphere of democracy, following the resumption of parliamentary life in the Kingdom, the House of Representatives has formed a Special Committee on Public Freedoms and the Rights of Citizens with the task of protecting freedoms from any violations to which they might be subjected.

MEXICO

[Original: Spanish]
[20 February 1990]

1. Where death occurs during detention as a result of torture or injuries inflicted by the authorities, criminal action shall be taken against those responsible. Mexico is a State subject to the rule of law and therefore any arbitrary or summary extrajudicial execution constitutes a serious violation of the Constitution and a crime punishable under the Penal Code.

2. Accordingly, the Federal District and the States of the Federation have removed the death penalty from their respective Penal Codes, in view of the fact that the Government recognizes, protects and defends the right to life. Juvenile offenders under 18 years of age may be charged under criminal law and are governed by a special scheme operated by the Juvenile Guidance Board, the aim of which is the social rehabilitation of juveniles who commit criminal offences.

3. Under the Penal Code for the Federal District in regard to ordinary law and for the whole of the Republic in regard to federal law, the head of any establishment for enforcing the penalties of imprisonment or ensuring the social rehabilitation or custody or rehabilitation of juveniles in pre-trial or administrative detention, who receives anyone as a prisoner, detainee or convict without observing the relevant legal requirements or who denies that such person is detained is liable to corporal punishment and to a fine (article 215).

4. Torture constitutes a serious violation of human rights. Consequently, on the initiative of the Senate Human Rights Commission and in order to protect the individual guarantees laid down in our Constitution, in 1986, the Congress of the Union passed the Federal Act for the Prevention and Punishment of Torture, with the aim of eradicating this evil and of establishing criminal penalties for offenders. As far as cruel, inhuman or degrading punishment is concerned, the Constitution of the United Mexican States stipulates that punishments by mutilation and infamy, branding, flogging, beating with sticks, torture of any kind, excessive fines and any other unusual or overwhelming penalties are prohibited (art. 22).

5. Furthermore, the Attorney-General of the Federal District issued orders on 9 May 1989 and 4 January 1990, which enjoined officials of the Public Prosecutor's Department to accord detainees decent humanitarian treatment.

6. The same orders stipulate that, before and after the interrogation of a suspect, he must be examined by a member of the medical service assigned to the Public Prosecutor's Department, who shall attest to his physical and mental state, in order to avoid his torture or ill-treatment.

7. In Mexico, all persons are equal before the law and all forms of arbitrary detention and ill-treatment are prohibited by the Constitution and punishable under the Penal Code.

8. The Political Constitution of the United Mexican States provides that no one shall be deprived of his freedom without prompt trial by previously established courts, which observe proper trial procedure and comply with the

laws enacted prior to the act (art. 14). Similarly, no arrest or detention warrant shall be issued except by a court or without a prior report, charge or complaint of a specific act that is subject, under the law, to corporal punishment, duly supported either by a sworn statement given by a reliable person or by any other information indicative of the responsibility of the accused. The Penal Code now in force for the Federal District in respect of ordinary law and for the whole Republic in respect of federal law, therefore, treats the issuance of an order to arrest a person for a crime that does not warrant imprisonment or failure to make a report, charge or accusation obstruction of justice (art. 225).

9. The Mexican Constitution empowers the administrative authorities to impose penalties limited to a fine or detention for up to 36 hours for violations of Government and police regulations. However, if the offender does not pay the fine imposed, this will be converted into arrest for the relevant period, which shall in no case exceed 36 hours (art. 21).

10. The Penal Code currently in force for the Federal District in respect of ordinary law and for the Republic in respect of federal law stipulates that public servants who, in the exercise of their duties or in connection therewith, do violence to another person without just cause, or vex or insult him are guilty of the offence of abuse of authority (art. 215). Similarly, the Federal Act for the Prevention and Punishment of Torture lays down that any public servant of the Federation or the Federal District is guilty of the offence of torture if he himself or through a third party intentionally inflicts severe physical or mental pain or suffering on a person in order to obtain from him or from a third party information or a confession, to induce him to act in a certain way or to punish him for an act he has committed or is suspected of having committed (art. 1).

11. The coercion and intimidation of detainees subsequent to their release from detention constitutes an offence under the Penal Code and under the Federal Act for the Prevention and Punishment of Torture.

12. In accordance with its Constitution, Mexico has no private prisons or courts. However, any individual who detains another person in a private prison, is guilty of the offence of deprivation of freedom, as laid down in the Penal Code, article 364 for the Federal District in respect of ordinary law and for the whole Republic in respect of federal law.

13. For additional information on the treatment given to persons subjected to any form of detention in Mexico, the Centre for Human Rights may refer to the national legislation available in its documentation centre namely:

(a) The Political Constitution of the United Mexican States, articles 14, 16, 17, 18, 19, 20, 23 and 107 XVII;

(b) The Penal Code for the Federal District in respect of ordinary law and for the whole Republic in respect of federal law, articles 215 and 225;

(c) The Federal Act for the Prevention and Punishment of Torture, articles 1 to 6.

PHILIPPINES

[Original: English]
[20 March 1990]

A. Death during detention, extra-judicial executions and other arbitrary or summary executions

1. The Philippines is definitely committed to the promotion and protection of human rights. In fact it has created a Commission with the specific task of undertaking this mandate (Section 17, Article XIII). Let it be stressed that even before the advent of the new Constitution, respect for human rights by the Filipinos had already been in practice. Thus, even in the Malolos Constitution and all Constitutions that follow there are provisions which are in concept and nature geared towards the protection of human rights.

2. The present Constitution, in its declaration of principles and policies, states that it values the dignity of every human person and guarantees full respect for human rights (Section 11, Article 11). The provisions in the Bill of Rights, Article III, specify several rights for the protection of the individual. Paragraph 2, Section 12 specifically speaks of the prohibition of the use of torture, force, violence, threat, intimidation or any other means which vitiate the free will of an individual. Secret detention places, solitary or incommunicado imprisonment or other similar forms of detention are taboo.

3. Philippine law is therefore not lacking in legislation protecting individual rights. But unlikely events do arise despite established mechanisms to prevent them. Indeed, one area of major concern is death of the individual during detention. When this happens, a big question immediately arises in the minds of the people and some blame the death on the institution responsible for the detention. This will trigger various speculations which are exploited to the hilt by the enemies of the State. Sooner or later the whole nation will become preoccupied with the subject and the institution more often than not is hard put to explain what exactly happened. This situation should be prevented by all means.

4. In the Philippines, the death of prisoners does occur occasionally. The national penitentiary is most often published as the place where death happened, but we hasten to add that those deaths were precipitated by gang rivalry which led to rioting. That is why prisoners who belong to one faction are segregated from one another to forestall gang fights.

5. But the kind of deaths which will surely provoke resentment and denunciation by the people are those ascribed to law enforcers who, because of anger or for some ulterior motive, may eliminate the detainee. These cases are under investigation.

6. In the Philippines, we have coined a word for extrajudicial executions. We call it euphemestically "salvaging". These are the killings attributed to members of the military and of the police force who want to eliminate a person who is kidnapped and killed and whose body is dumped somewhere else. That might be true perhaps during the reign of terror of a dictator but not during

the present régime. Such killings still occur, but every effort is exerted to minimize them and these efforts have been effective.

7. The Commission on Human Rights is leaving no stone unturned in addressing the problem. A fair number of these cases are currently being investigated.

8. On the whole, the Philippines prosecutes all forms of arbitrary and summary killings. All are in derogation and do violence to the inherent right to life of an individual, which is protected under the Constitution.

B. Capital punishment, including the execution of juvenile offenders

9. Capital punishment was abolished under the present Philippine Constitution, ratified in February 1987. Article III, Section 19 (1) of said Constitution provides:

> "Section 19 - (1) Exessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall the death penalty be imposed unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua." (Underscoring supplied)

10. As of this writing, Congress has not enacted any law imposing the death penalty. There is, however, a pending bill proposing to impose the death penalty for heinous crimes. The Senate has shelved this bill until more research and study have been carried out.

C. Unacknowledged detention, enforced and involuntary disappearance

11. Unacknowledged detention under the present Government is well nigh impossible. The rules on the warrant of arrest are so restrictive that almost always arrests are made with warrants, except in cases where warrantless arrests are allowed by law. Upon detention after the arrest, the detainees must be booked; that is, his/her detention is recorded. Denial by the detaining authorities of the detention of a person can be questioned by a petition for writ of habeas corpus. Section 12 (2), Article III, of the Philippine Constitution provides:

> "Section 12 - (2) no turture, force, violence, threat, intimidation or any other means which vitiate free will shall be used against him. Secret detention places, solitary, incommunicato or other similar form of detention are prohibited."

D. Torture and other cruel, inhuman or degrading treatment or punishment

12. It is indisputable that torture and other cruel, inhuman or degrading treatment in all its hideous forms constitute gross violations of local as well as international law. The Philippine Constitution and its domestic legislation as well as international legal instruments condemn these acts. The Philippines, with its long-standing commitment to individual rights and rule of law, does not lag far behind. The Philippines, aware of the

Universal Declaration of Human Rights, has incorporated into its Constitution, and its legal system, provisions of law that prohibit and eliminate torture, and other cruel, inhuman or degrading treatment or punishment.

13. Fundamental provisions bearing on the subject have been incorporated in the present Constitution of the Philippines. Article 2 of the Philippine Constitution, on the principles and State policies, provides that the generally-accepted principles of international law be made part of the law of the land.

14. Under Article 3 of the Bill of Rights, it is guaranteed to every person, irrespective of race, sex, colour, religion or political affiliation, that "no torture, force, violence, threat, intimidation or any other means which vitiate the free will shall be used against him" and that "secret detention places, solitary confinement or other similar forms of detention will be prohibited". Section 19 of the same Article expressly provides that excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall the death penalty be imposed, unless for compelling reasons involving heinous crimes, by which the Congress hereafter provides. Any death penalty already imposed shall be reduced to life imprisonment.

15. A significant feature of the 1987 Constitution is the creation of the so-called Commission on Human Rights. This is the only such constitutional Commission in the world. Like the judiciary, this Commission is independent and does not report to the Executive Department. It hears and advocates them in cases against the Government. The Commission has made the following important statements:

(a) Statement on human rights dated 6 May 1988. One section reads:

"1.1 A person may not be detained unlawfully. During his detention the following are prohibited:

(a) The use of torture, force, violence, threats or any means that vitiate his free will;

(b) The use of secret detention places, solitary, incommunicado and other similar forms of detention;

(c) The employment of physical, psychological or degrading punishment or the use of inhuman facilities.

1.2 Every Filipino regardless of whether he is a member of the military forces or a political organization, a civilian or insurgent, and even a foreigner residing in or visiting the country, is guaranteed these rights."

(b) Guidelines on visitation and the conduct of the investigation, arrest, detention and related operations, dated 6 May 1988. Quoted and enumerated here are some of the constitutional powers and functions of the Commission on Human Rights, namely:

"2.1 Investigate, of its own or on complaint by any party, all forms of human rights violations involving civil and political rights;

2.2 Protect the rights of Filipinos in the Philippines and abroad;

2.3 Exercise visitorial powers over jails, prisons, detention facilities; and

2.4 Request the assistance of any department, bureau office or agency in the performance of its functions."

16. These guidelines, issued by the Commission, were addressed primarily to the law-enforcement agencies. A joint declaration of undertaking was signed by all law-enforcement agencies of the Philippines and they are at present in the process of enforcing the following guidelines promulgated by the Commission:

"The heads of the various law-enforcement agencies shall be responsible for promulgating the rules and regulations to be disseminated to all members of their units or agencies to ensure observance of the rights guaranteed in the Constitution, especially those enumerated in the Commission on Human Rights statement promulgated 6 May 1988, which are incorporated by reference.

Commanders and elements of all units under their command shall extend maximum co-operation and courtesy to members of the Commission on Human Rights and/or their authorized representatives in the exercise of their constitutional authority and functions.

Recognizing the crucial role of complainants and witnesses in human rights cases, commanders and elements of all units under their command are responsible for their safety and security from potentially adverse or hostile actions.

Immediate members of the family, extended members of the family, legal counsel and spiritual advisers shall have free access to detained persons, subject to the provisions of applicable laws, rules and regulations."

17. Apart from the constitutional provisions as mentioned above, there is a long-standing provision of a national legislation prohibiting public officers from maltreating prisoners in their charge. Under Article 235 of the Philippine Revised Penal Code, it is a crime for them to impose punishment not authorized by the regulations or to inflict such punishment in a cruel and humiliating manner.

18. With the return of the country to normalcy under the present régime, the new Congress is expected to pass new laws providing penal and civil sanctions for acts of torture or similar practices, as well as compensation to and rehabilitation of victims of such acts or practices and their families, as mandated under paragraph 4, Section 12, Article III of the Philippine Constitution.

19. Although judicial as well as administrative remedies are available to the victim because of the existing laws, new legislative enactment are still necessary to deter what may be considered as torture within the universally-accepted principles of international law. The technical and scientific methods of tracing evidence of torture and similar practices which

have become possible with present advances in science and technology are yet to find a definite place in the statute books, so as to make them completely accepted as legal means to establish a corpus delecti.

E. Detention and ill-treatment of members of vulnerable and other groups such as children, trade-unionists, human rights defenders, parliamentarians, journalists and peasants

20. With regard to the detention and treatment of members of vulnerable and other groups such as children, trade unionists, human rights defenders, parliamentarians, journalists and peasants, the Philippine Government has adopted some measures by way of legislation in order to protect their rights and liberties. In the case of minors, the Child and Youth Welfare Code, PD 603 as amended by PD 1179, has provided for protection for children who have committed certain crimes under Philippine law, as follows:

(a) Article 189 of P.D. 603. Youthful offender, defined: a youthful offender is a child, minor or youth, including one who is emancipated in accordance with the law, who is over nine years but under 18 years of age at the time of the commission of the offence;

(b) A child nine years of age or under at the time of the commission of the offence shall be exampted from criminal liability and shall be committed to the care of his or her father or mother, or nearest relative or family friend at the discretion of the court and subject to its supervision. The same shall be done for a child over nine years and under 15 years of age at the time of the commission of the offence, unless he acted with discernment, in which case he shall be proceeded against in accordance with article 192;

(c) Article 192. Suspension of sentence and commitment of the youthful offender: if after hearing the evidence in the proper proceedings, the court should find that the youthful offender has committed the acts charged against him, the court shall determine the imposable penalty, including any civil liability chargeable against him. However, instead of pronouncing judgement or conviction, the court, upon application of the youthful offender and if it finds that the best interest of the public as well as that of the offender will be served thereby, may suspend all further proceedings and commit such a minor to the custody or care of the Department of Social Services and Development or to any training institution operated by the Government or any other responsible person until he shall have reached 21 years of age, or for a shorter period as the court may deem proper, after considering the reports and recommendations of the Department of Social Services and Development or the government training institution or responsible person to whose care he has been committed.

(i) "Upon receipt of the application of the youthful offender for suspension of his sentence, the court may require the Department of Social Services and Development to prepare and submit to the court a social case study report on the offender and his family."

(ii) "The youthful offender shall be subject to visitation and supervision by a represetnative of the Department of Social Services and Development or government training institution as the court may designate, subject to such conditions as it may prescribe."

(iii) "The benefits of this article shall not apply to a youthful offender who has once enjoyed suspension of sentence under its provisions or to one who is convicted of an offence punishable by death or life imprisonment or to one who is convicted for an offence by the military tribuals."

21. Under Article 203 of the said code, the Department of Social Welfare is mandated to establish detention homes in cities and provinces distinct and separate from jails, pending the disposition of cases of juvenile delinquent. These laws are intended to protect minors, as the State is constitutionally mandated to be the guardian of the underdog.

22. In the case of trade unionists, human rights defenders, parliamentarians, journalists and peasants, the Philippine Government has ensured that their rights under the Constitution are amply protected. Under the Constitution, a person detained for the commission of an offence and undergoing investigation is given a Miranda warning, informing him of his right to counsel, to remain silent and to be informed of his rights, as well as of the fact that all statements made by him may be used against him in a court of law.

23. Under Article 125 of the Revised Penal Code of the Philippines, it is provided that a person detained shall be informed of the reason for his detention and shall be allowed upon his request to communicate and confer at any time with his attorney or counsel and to be visited by his immediate relatives.

24. Under RA 857,

"Any public officer or employee who shall obstruct, prohibit, or otherwise prevent an attorney entitled to practice in the courts of the Philippines from visiting and conferring privately with a person arrested, at any hour of the day, or, in urgent cases, of the night, said visit and conference being requested by the person arrested or by another acting in his behalf, shall be punished by arresto mayor."

25. Under Article 23 of the 1960 Rules for the Treatment of Detainees, prisoners are presumed to be innocent and shall be treated as such. Young prisoners shall be segregated from adults and shall be detained in a separate institution. Furthermore, they shall be segregated from convicted prisoners. They are allowed to be visited and treated by their own doctors if there is reasonable ground for their application as well as to be allowed reasonable facilities by communicating through letters to his relatives and friends. Under the said rules, detention prisoners enjoy certain privilages, like the privilege to wear his own customary garments inside the dormitory, to receive visitors four times a month on any day except Sunday, to receive books, letters and newspapers, to grow his hair in his customary style, to smoke his cigar and cigarettes except in prohibited places.

26. In the light of the foregoing, the Philippine Government has consistently observed the rights of detention prisoners, both minors and adults, with high regard for the Universal Declarations of Human Rights.

F. Comments on arrest and detention without legal grounds

27. Arrest and detention without grounds or on ill-defined or dubious grounds, is not allowed. Section 2, Article III of the Bill of Rights of the Philippine Constitution (1987) expressly provides:

> "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable and no search warrant or warrant of arrest shall be issued except upon probable cause to be determined peresonally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized."

28. The penal sanction for violation of this right are provided in Article 124 of the Revised Penal Code, as follows:

> "Article 124. Arbitrary detention - Any public officer or employee who, without legal grounds, detains a person, shall suffer:
>
> 1. The penalty of arresto mayor in its maximum period to prision correccional in its minimum period, if the detention has not exceeded three days;
>
> 2. The penalty of prision correccional in its medium and maximum periods, if the detention has continued more than three but not more than fifteen days;
>
> 3. The penalty of prision mayor, if the detention has continued for more than fifteen days but not more than six months; and
>
> 4. That of reclusion temporal, if the detention shall have exceeded six months."

29. The commission of a crime, or violent insanity or any other ailment requiring the compulsory confinement of the patient in a hospital, shall be considered legal grounds for the detention of a person.

30. If committed by private individuals, the imposable penalties are:

(a) Article 267. Kidnapping and serious illegal detention any private individual who shall kidnap or detain another or in any other manner deprive him of his liberty shall suffer the penalty of reclusion perpetua or death:

(i) If the kidnapping or detention shall have lasted more than five days;

(ii) If it shall have been committed simulating public authority;

(iii) If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made;

(iv) If the person kidnapped or detained is a minor, female or a public officer.

(b) The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the above-mentioned circumstances were present at the commission of the offence;

(c) Article 268. Slight illegal detention: The penalty of reclusion temporal shall be imposed upon any private individual who commits the crimes described in the preceding article without the attendance of any of the circumstances enumerated therein;

(d) The same penalty shall be incurred by anyone who shall furnish the place for the perpetration of the crime;

(e) If the offender shall voluntarily release the person so kidnapped or detained within three days of the commencement of the detention, without having attained the purpose intended, and before the institution of criminal proceedings against him, the penalty shall be prision mayor in its minimum and medium periods and a fine not exceeding 700 pesos;

(f) Article 269. Unlawful arrest: The penalty of arresto mayor and a fine not exceeding 500 pesos shall be imposed upon any person who, in any case other than those authorized by law, or without reasonable grounds therefore, shall arrest or detain another for the purpose of delivering him to the proper authorities.

G. Administrative detention without charge or trial and other executive and preventive detention

31. Administrative detention without charge or trial and other executive and preventive detention exist only for the purpose of discipline and order in the rank and file of the military organization. This is an indispensable attribute of the military which cannot be relinquished, as the stability, peace and life of the State and its Government would otherwise be at risk. Commonwealth Article No. 403, Article 70 governs the scope of detention:

> "Arrest or confinement: any person subject to military law charged with crime or with a serious offence under these articles shall be placed in confinement or in arrest, as circumstances may require; but when charged with a minor offence only, such person shall not ordinarily be placed in confinement. Any person placed in arrest under the provision of this article shall thereby be restricted to his barracks, quarters, or tent, unless such limit shall be enlarged by proper authority ...."

32. In certain cases, the Rules of Courts and Rule of Procedures of Quasi-Judicial Bodies provide for arrest and detention for insubordinate acts against the courts and administrative bodies vested with quasi-judicial powers.

H. Restraints on the use of force by law-enforcement officials

33. In the Philippines, the rights of persons under detention or confined in jail are also protected by the Government. Several laws have been enacted to this effect, particularly:

(a) Article 235 of the Revised Penal Code. This provision penalizes any public officer or employee who goes beyond the limits in the correction or handling of a prisoner or detention prisoner under his charge, by the imposition of punishments not authorized by the regulations or by inflicting such punishments in a cruel and humiliating manner. However, this provision is without prejudice to whatever physical injuries or damage are inflicted by such public officer or employee upon the said prisoner or detention prisoner. The penalty is higher if the purpose of the maltreatment is to extort a confession or to obtain some information from the prisoner.

(b) Article 124 of the Revised Penal Code. This provision penalizes any public officer or employee who, without legal grounds, detains a person. The crime committed is termed "arbitrary detention".

(c) Article 125 (Delay in the delivery of detained persons to the proper judicial authorities). This provision penalizes any public officer or employee who shall detain any person on a legal ground and fails to deliver such person to the proper judicial authorities within a certain period of time. The second provision of this article mandates that a person detained shall be informed of the cause of his detention and that he shall be allowed, upon his request, to communicate and confer at any time with his attorney or counsel.

(d) Article 126 (Delaying release). This article penalizes any public officer or employee who delays beyond the period of time specified therein the performance of any judicial or executive order for the release of a prisoner or detention prisoner, or unduly delays the service of the notice of such order to said prisoner or the proceedings upon any petition for the liberation of such person.

(e) Section 2, Rule 113 of the Rules of Court (Arrest - how made). An arrest is made by an actual restraint of the person to be arrested, or by his submission to the custody of the person making the request.

34. No unnecessary or unreasonable force shall be used in making an arrest, and the person arrested shall not be subject to greater restraint than is necessary for his detention.

35. Aside from the Revised Penal Code, there are also provisions in the Philippine Constitution which protect the rights of a detainee. These are the following:

ARTICLE III - BILL OF RIGHTS

(a) SECTION I. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the law.

(b) SECTION 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law. (2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

(c) SECTION 12. (1) Any person under investigation for the commission of an offence shall have the right to be informed of his right to remain silent and to have competent and independent counsel, preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel. (2) No torture, force, violence, threat, intimidation or any other means which vitiate free will shall be used against him. Secret detention places, solitary, incommunicado or similar forms of detention are prohibited. (3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him. (4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to and rehabilitation of victims of torture or similar practices and their families.

(d) SECTION 14. (1) No person shall be held to answer for criminal offences without due process of law. (2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

(e) SECTION 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial or administrative bodies.

(f) SECTION 19. (1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall the death penalty be imposed unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua. (2) The employment of physical, psychological or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditons shall be dealt with by law.

I. Coercion and intimidation of detainees subsequent to their release from detention

36. Article 286 of our Revised Penal Code penalizes the crime of grave coercion. It is committed by preventing a person from doing something not prohibited by law or compelling him to do something against his will, whether just or unjust.

37. On the basis of the foregoing, it is highly probably that even after the release of a detained person, he may be subjected to coercion and intimidation. The elements constituting coercion are:

(a) That a person be prevented from doing something prohibited by law or that he be compelled to do something against his will, whether just or unjust;

(b) That in preventing or compelling the victim, some violence, force or intimidation be used;

(c) That the one who prevents or compels another to do or not to do something has no right to do so.

38. The Commission on Human Rights, the Judge Advocate General's Office (JAGO) and the civilian courts of justice are among the competent authorities which could take cognizance of any complaint or information regarding violations.

39. Our Bureau of Prisons has provided for the appropriate rules to effectuate the prompt release of detained prisoners and to prevent unjustifiable delay in this regard. If these rules are properly implemented, occasions for coercion and intimidation of detained prisoners will thus be avoided.

40. Moreover, our Government has provided for several laws that will ensure proper, just and humane treatment of any individual subjected to any form of arrest, detention or imprisonment e.g. Section 1705 to 1751 of the Revised Adminsitrative Code of the Philippines regarding management of prisons and jails, Rules on the Treatment of Prisons, adopted by the Department of Justice on 7 January 1959.

J. Privatization of prisons

This matter has not yet been explored and is not suitable to the Philippine setting at the present time.

TUNISIA

[Original: French]
[14 March 1990]

1. With the onset of the historic change that took place on 7 November and the beginning of the new era, Tunisian positive law showed its concern to protect the physical integrity of the individual against any practices or behaviour prejudicial to it by enriching its legal arsenal with new instruments embodying human rights and public freedoms.

2. It was with this end in view that at the international level, by Act No. 88-79 of 11 July 1988, Tunisia acceded, without any reservation or interpretative statement, to the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

3. Furthermore, out of their concern further to protect individual freedom against any violations, Tunisian legislators have recently amended a number of articles of the Code of Criminal Procedure so as to limit custody to a very short period, as required for investigative purposes (Act. No. 87-70 of 26 November 1987).

4. This restriction is in itself a guarantee. The above Act grants persons placed in the custody of police officers the right to request a medical examination during or on expiry of the period of custody. Police officers are required to mention any such request in the judicial record.

5. The purpose of this provision is to give persons held in police custody an opportunity to have any violence during custody placed on record and, in that event, to secure enforcement of the penalties provided for by the Penal Code as described above. This provision has a definite deterrent effect.

6. The Act also stipulates the procedure to be followed in drawing up the record, which must always indicate the date and time when the period of custody began and ended; this applies to the duration of all periods of questioning.

7. Article 199 of the Code of Criminal Procedure stipulates that "any acts or decisions contrary to the provisions of public order, to the fundamental rules of procedure and to the legitimate interest of the defence are null and void".

8. If violence is shown to have been used against persons in custody, the statements obtained by police officers through the use of such methods shall be declared null and void on the grounds that they are contrary to regulations and to the legitimate interests of the defence.

9. The Code of Criminal Procedure also stipulates that any violation of the established regulations that involves an infringement of individual freedom shall give rise to disciplinary measures, in addition to the penalities established by the Penal Code.

10. Furthermore, under article 85 of the Code of Obligations and Contracts, any individual who is the victim of unlawful arrest or detention has the right to claim damages from the official concerned.

11. It should also be noted that persons deprived of their freedom are in fact treated humanely and with respect for the inherent dignity of the human person.

12. At a different level, the various investigations made of detention centres provide sufficient information on the humane conditions in which detainees continue to be kept and on the efforts made to facilitate their rehabilitation.

13. In this connection, prisons and re-education centres have recently acquired a set of regulations (Decree 88-1876 of 4 November 1988) that set out the rights and obligations of detainees. The regulations provide a clear and detailed definition of all the rights of prisoners (the right to receive visits, to be given medical attention, to be remunerated for work done, to play sports, to learn a trade, to communicate with their lawyers in the absence of prison warders, to write to their lawyers and to the judicial and administrative authorities concerned, the authorization of the prison governor to release on parole any detainee who satisfies certain conditions, ...). It devotes particular attention to juvenile delinquents and lays down very favourable conditions for them, with a view to their reintegration into society.

14. In general, the courses provided in the institutes and colleges in which Tunisia's domestic security forces are trained include subjects designed to emphasize the concern of the new Tunisia to ensure respect for an up-to-date and comprehensive conception of human rights and to guarantee physical integrity against any illegal or unlawful arrest, detention, imprisonment or other form of restriction of freedom.

TURKEY

[Original: English]
[19 March 1990]

1. Turkey has transmitted to the Secretary-General ample information on substantial improvements in recent years in the legislation regarding the enforcement of sentences. This information can be found in documents E/CN.4/Sub.2/1985/12/Add.1 and 3, E/CN.4/Sub.2/1987/12 and Add.2, E/CN.4/Sub.2/1988/13 and E/CN.4/Sub.2/1989/20. Information on the most recent amendments to the legislation concerning the conditions of imprisonment and detention is given below.

I. General information

2. The Turkish Government continues to do its best in order to improve the physical conditions of imprisonment and detention. These efforts are coupled with important steps aiming at increasing education and rehabilitation means and facilities. To this effect, disciplinary rules and regulations have been revised and relaxed, and the convicts in military prisons are being transferred to civil prisons. Turkish prisons have been visited by many persons and institutions, including parliamentarians from other countries, non-governmental organizations and the United Nations Special Rapporteur on Torture. Conditions in Turkish penitentiaries are under the constant supervision of the competent authorities. Furthermore, a Commission established by the Turkish Grand National Assembly periodically monitors the prison conditions and makes the necessary recommendations for improvement. Sensitivity to public opinion and the mass media on this subject has been another factor encouraging the Government to pursue its efforts to provide inmates with better conditions.

II. SHORTENING OF DETENTION PERIODS

3. The detention period for individual offences is 24 hours. However, for collective offences it can be extended to 15 days by obtaining permission from the public prosecutor or by court order in urgent circumstances.

4. In accordance with a proposed amendment in the Code of Criminal Procedure, the duration of the detention period for collective offences which fall within the jurisdiction of the ordinary criminal courts is to be lowered from 15 days to 4 days.

5. For offences which fall within the jurisdiction of State Security Courts, this period is lowered from 15 days to 6 days. This six-day detention period may be extended to 10 days if the offence is committed by more than 10 people, for five years after the bill is passed. Such a provision must be kept for a period of five years in order to handle the collective crimes which still continue to be committed in Turkey.

III. RIGHT TO CONSULT ONE'S ATTORNEY

6. Article 136 of the current Code of Criminal Procedure foresees that defendants may consult with one or more attorney during every phase of their interrogation. In accordance with this article, the Ministry of Justice on 15 April 1986 issued a circular pointing to this right of the defendant.

7. The contents of the above circular have been confirmed through instructions issued on 26 September 1989 by the Prime Minister to the Ministries of the Justice and the Interior.

8. Instructions issued at the highest level of the Government contain the following elements:

(a) According to article 36 of the Turkish Constitution, everyone has the right of litigation either as plaintiff or defendant before the courts through lawful means or procedure;

(b) Article 136 of the Turkish Code of Criminal Procedure foresees that at any and every stage of the proceedings the accused shall have the right to seek the advice of, and be represented by, one or more counsel. The said article has been based on the reasoning that everyone has the right not to be arbitrarily brought before the courts. Therefore everyone must be entitled to fully exercise his or her right to defence at any and every stage of the investigation, including during the preliminary interrogation;

(c) In view of the foregoing, it is concluded that any person in custody who requests to meet the defence counsel can do so during the preliminary interrogation;

(d) However, according to article 143 of the Turkish Code of Criminal Procedure, where it is considered that the purposes of the investigation will not be jeopardized, defence counsel may be accorded access to examine all papers and documents relative to the investigation before the indictment is submitted to the court;

(e) The present legislation also contains safeguards against the abuse of the above rights, aiming at ensuring the sound conduct of the investigation. Article 144 of the Turkish Code of Criminal Procedure clearly states that a person under detention may at any time meet, confer and correspond with his attorney. According to the same article, until the opening of the final investigation the judge may prohibit the disclosure of facts or other information unsuitable for the cognizance of the accused. Depending upon the nature of the charges and, where necessary, until the opening of the final investigation, the judge personally, or his duly appointed delegate, or a rogatory judge, may be present during the meetings between the accused and his counsel;

(f) Within the framework of the relevant provisions of the Turkish Code of Criminal Procedure, all officials who carry out investigations in their capacity as deputies of the public prosecutor have been requested to allow, upon the instructions of the public prosecutor, any person under detention willing to meet his or her attorney, to do so.

9. Article 155 of the "Regulation concerning the enforcement of sentences and the administration of institutions for the enforcement of sentences and detention" was amended on December 1989 so as to ensure better implementation of the right to consult one's attorney. The revised text of article 155 reads as follows: "Meetings of detained or imprisoned persons with their defense counsel will take place under conditions such that, while remaining in sight, they cannot be directly or indirectly heard by the officer-in-charge".

IV. PROVISION OF INFORMATION TO DETAINEES ON THEIR RIGHTS AND RESPONSIBILITIES WITH REGARD TO THE CONDITIONS OF DETENTION, AND THE PROCEDURE FOR COMPLAINTS

10. Article 106 of the "Regulation concerning the enforcement of sentences and the administration of institutions for the enforcement of sentences and detention" was amended in December 1989 in order to institutionalize the practice of informing detainees of the conditions of their detention, their rights and responsibilities as well as of the ways and procedures of formulating requests and complaints. The revised text of article 106, entitled "Information of detained or imprisoned persons and their complaints", is as follows.

11. "Upon admission to the institution, detained or imprisoned persons will be informed in writing and given the necessary oral explanation of their rights and responsibilities, of the education and rehabilitation régime to be applied to them, of the ways and means of obtaining information and of filing complaints.

Detained or imprisoned persons will be entitled, at any time, to lodge their requests or complaints with the director of the institution or his representative, the Office of the Public Prosecutor or the Ministry (of Justice). Requests or complaints formulated and submitted in a sealed envelope by a detained or imprisoned person will be referred to the competent authority without delay."

VI. PROTECTION OF THE RIGHTS AND INTERESTS OF DETAINEES AND THEIR SPIRITUAL DEVELOPMENT

12. Article 113 of the "Regulation concerning the enforcement of sentences and the administration of institutions for the enforcement of sentences and detention" provides for the assistance of the director of the institution in upholding the morale of the detainees and protecting their rights and interests. The title of this article was amended on December 1989 and a new paragraph added, in order to ensure that the detainees are free to observe the requirements of their religion or belief and their spiritual and moral development. The additional paragraph of article 113, entitled "Protection of the rights and interests of detainees and their spiritual development", reads as follows:

> "Detained or imprisoned persons will, within the framework of the possibilities, be permitted to observe the requirements of their religious, spiritual and moral conceptions."

V. VISITS TO DETAINED OR IMPRISONED PERSONS

13. Article 152, paragraph 1 of the "Regulation concerning the enforcement of sentences and the administration of institutions for the enforcement of sentences and detention" was amended on December 1989 so as to authorize more persons to visit a detained or imprisoned person. In its revised form, the text provides that a detained or imprisoned person may be visited by his or her spouse, children, grandchildren, mother, father, grandmother, grandfather, brothers, sisters, uncles, aunts, father-in-law, mother-in-law, tutor, curator, attorney, lawyer, cousins, brothers-in-law, sisters-in-law, daughters-in-law and sons-in-law.

14. Furthermore, a new paragraph added to article 239 provides that, in case of their transfer to another institution, detained or imprisoned persons will be entitled to inform their relations of the situation.

VII. LEAVES

15. Amendments brought on December 1989 to the "Regulation concerning the enforcement of sentences and the administration of institutions for the enforcement of sentences and detention" further improved the conditions for leave to be given to prisoners. In its revised form, article 119 provides that persons sentenced to 10 years or less of imprisonment will be entitled to three leaves a year. Furthermore, only the duration of the remaining term of imprisonment, after deduction of the term already served, will be taken into account in calculating the leaves.

VIII. IMPROVEMENTS IN THE LEGISLATION CONCERNING THE PHYSICAL CONDITIONS OF DETENTION AND EXECUTION OF PUNISHMENTS

16. Amendments introduced on December 1989 in the "Regulation concerning the enforcement of sentences and the administration of institutions for the enforcement of sentences and detention" further improved the conditions of detention in the institutions, restricted the use of instruments limiting corporal movements, subjected certain punishments and disciplinary measures to the approval of health personnel and increased the number and enlarged the scope of medical examinations to be carried out regularly. Some of these amendments are listed below.

17. A new paragraph added to article 157 provides that no collective corporal, cruel, inhuman or degrading treatment can be administered as disciplinary punishment.

18. Individual cells will be illuminated on the basis of the technical standards (addition to art. 161, para. 1).

19. Chains and logs cannot be used as means of preventing bodily movement. Handcuffs, strait jackets for the mentally ill and other instruments limiting bodily movement cannot be used except in the following cases:

(a) When taking the detained or imprisoned person before an administrative or judicial authority outside the institution of enforcement of sentences, in order to prevent his escape;

(b) For medical reasons, under the instructions and supervision of the medical personnel;

(c) In order to prevent the detained or imprisoned person from causing injury to himself or to others or from damaging objects, in the event of insufficiency of other means of control, and under the instructions of the director of the institution, providing that advice is immediately sought from the medical personnel and the relevant administrative authority is immediately informed of the situation (art. 172, revised);

(d) Before the enforcement of solitary punishment, prisoners will be examined by a physician. If, as a result of the medical examination, it appears that the prisoner cannot support this punishment, the enforcement will

either be delayed or executed at intervals approved by the physician. During the enforcement of the punishment, the prisoner will be under the supervision and control of a physician (art. 173, revised).

20. All references made to "confinement on bread and water" (katiksiz hapis) and related provisions contained in paragraph 1 (5) of article 157, paragraph 3 of article 165, article 174, paragraph "C" of article 78/B, article 164 and paragraph 1 (2) of article 171 have been repealed with the amendments carried on December 1989 to the "Regulation concerning the enforcement of sentences and the administration of institutions for the enforcement of sentences and detention".

IX. RIGHT OF DETAINED OR IMPRISONED PERSONS TO HAVE THE ASSISTANCE OF AN INTERPRETER IF THEY CANNOT SPEAK TURKISH

21. Article 163 of the "Regulation concerning the enforcement of sentences and the administration of institutions for the enforcement of sentences and detention", which provided detained or imprisoned persons liable to a disciplinary measure, with the right to defend themselves, has been supplemented with a new paragraph which stipulates that "detained or imprisoned persons who do not speak Turkish will be provided with the services of an interpreter for their defence".

UKRAINIAN SOVIET SOCIALIST REPUBLIC

[Original: Russian]
[13 March 1990]

Citizens of the Ukrainian SSR enjoy the whole range of social, economic, political and individual rights and freedoms set forth in and guaranteed by the Constitution of the USSR, the Constitution of the Ukrainian SSR and Soviet laws.

Article 52 of the Constitution of the Ukrainian SSR has consolidated the principle of inviolability of the person: "Citizens of the Ukrainian SSR are guaranteed inviolability of the person. No one may be arrested except by a court decision or on the warrant of a procurator".

This constitutional principle is further developed in criminal law, the law of criminal procedure and legislation on administrative offences in the Ukrainian SSR.

Clear provisions in the law relating to the principles and procedure of short-term detention and confinement under guard, and the existence of special legislative acts governing such matters, establish legal safeguards to ensure that such measures are applied in accordance with the law, that detainees are treated humanely and that their rights are protected.

An agency of inquiry has the right to detain a person suspected of committing a crime for which deprivation of liberty may be assigned as a punishment only in the circumstances provided by law (art. 106 of the Code of Criminal Procedure of the Ukrainian SSR). Whenever a person is arrested a report must be prepared and the matter must be notified in writing within 24 hours to a procurator, who must, within 48 hours from the time of being notified of the arrest, either sanction confinement under guard or order the release of the detainee. The arrest of a person suspected of having committed a crime shall be notified to his family, if their home address is known, by the agency of inquiry. In the case of an arrest on suspicion of having committed a serious crime, the family shall be notified provided this does not hinder inquiries into the facts of the case.

In the case of detention of a minor, the parents or persons acting in their stead must be informed (section 2, art. 5 of the Regulations).

The procedure for short-term detention of persons suspected of having committed an offence is laid down in the Regulations on the subject. These Regulations are intended to ensure observance of citizens' rights and enhance the legality of procedures during short-term detention of suspected offenders.

Persons detained on suspicion of having committed an offence have the right: to know what they are suspected of; to demand verification by a procurator that the detention is lawful; to lodge complaints about the behaviour of an inquiry agent, investigator or procurator, and to file statements and petitions; to address complaints and petitions to State and public bodies, organizations and authorities; and to use their own clothing and footwear as well as other essential articles listed in the internal rules of procedure of places of detention.

Detainees are informed of their rights and obligations.

Persons detained on suspicion of having committed a crime shall be held in conditions which conform to the rules relating to health and hygiene; they shall be provided free of charge with meals meeting established standards, sleeping quarters and other living requirements, and medical services. They may be allowed visits by relatives and other persons on the written authority of an investigator or inquiry agent.

A person detained on suspicion of having committed a crime shall be released if the suspicion is not confirmed, if there is no need to confine the person under guard as a restraining measure or if the period of detention prescribed by law has expired.

Confinement of an accused or suspected person under guard for purposes of restraint may be ordered only by a court of a procurator, or by an agency of inquiry or an investigator with the sanction of a procurator, strictly on the basis of and in accordance with the procedure set forth in articles 148, 150 and 155-162 of the Code of Criminal Procedure of the Ukrainian SSR and the Regulations on Preliminary Confinement Under Guard.

Confinement under guard as a measure of restraint is permitted only in cases involving crimes for which deprivation of liberty for a period greater than one year may be assigned by law as a punishment. But even in such cases, confinement under guard is applied only when no other form of restraint will serve the purpose of determining the facts in the case. The law makes it obligatory, when deciding whether to impose a measure of restraint, for the gravity of the crime, the personality of the accused and his age, state of health and family status to be taken into account.

The law sets forth an exhaustive list of crimes for which an accused person (or suspect) may be confined under guard solely by reason of the danger of the crime (section 2, art. 155 of the Code of Criminal Procedure of the Ukrainian SSR).

A special procedure in established by law for the arrest of some categories of persons to ensure their inviolability and enable them to comply more effectively with the obligations incumbent on them.

Detention or confinement under guard may be applied as a measure of restraint against minors only be exceptional cases, in view of the gravity of the crime, on the basis of and in accordance with the procedure set forth in articles 106, 148, 150, 155 and 157 of the Code of Criminal Procedure of the Ukrainian SSR.

Confinement under guard may be effected on the decision of an agent of inquiry, investigator or procurator or by a court ruling or decision.

A procurator may sanction the arrest of a suspect or accused person when there are legal grounds for doing so, in which case he is required to familiarize himself thoroughly with all the materials; he must also personally question the suspect or accused person where necessary, and in all cases if that person is a minor (art. 157 of the Code of Criminal Procedure of the Ukrainian SSR).

In accordance with the Act on the Procuracy of the USSR, the Procurator General and the procurators under his authority must ensure that no one is arrested without a court order or the sanction of a procurator (art. 28 of the Act). A Procurator is required to release immediately any person unlawfully deprived of his liberty or held under guard for a period longer than that prescribed by law.

Any deliberately unlawful arrest, detention or apprehension constitutes a criminal offence under article 173 of the Criminal Code of the Ukrainian SSR.

The most important safeguard for establishing the truth, reaching a legally valid and equitable judgement and ensuring humane treatment of the individual is the right to defence.

The principle of guaranteeing the accused's right to defence, as set forth in the Constitution of the USSR (art. 158) and the Constitution of the Ukrainian SSR, is secured in article 21 of the Code of Criminal Procedure of the Ukrainian SSR. The new Fundamental Principles of the Legislation of the USSR and Union Republics of the Judicial system adopted on 13 November 1989 provide full protection of citizens' legal rights at all stages of criminal proceedings, including access to a lawyer from the very outset of an investigation. The right of a suspect, accused or indicted person to defence will henceforth be enhanced. This right is ensured by the participation of a defence counsel from the time of the person's detention, arrest or formal accusation (art. 14 of the Fundamental Principles).

The law (art. 45 of the Code of Criminal Procuedre of the Ukrainian SSR) provides for the obligatory participation of a defence counsel to protect the rights and interests of accused persons (or suspects) who, owing to their particular circumstances (under age, dumb, deaf, not proficient in the language used in the proceedings etc.), require additional procedural safeguards for the exercise of their right to defence. The participation of a defence counsel in the examination of a criminal case is obligatory when the statutory sanction provided for the crime in question is the death penalty.

An accused or indicted person is entitled to refuse a defence counsel at any time; such refusal shall be recorded, and the court shall rule on it. In cases where participation of a defence counsel is obligatory, refusal of such a counsel is not binding on the investigator, procurator or court (art. 46 of the Code of Criminal Procedure of the Ukrainian SSR).

Once he is admitted to the case the defence counsel is entitled to have meetings with the accused in private, with no restriction as to the number of length of such meetings, to acquaint himself with all the materials of the case, to submit evidence, file petitions, take part in the judicial examination and present challenges or lodge appeals against the actions or decisions of the investigator, the procurator and the court. With the investigator's permission, the defence counsel may be present during interrogation of the accused and attend other proceedings.

The court, procurator, investigator and inquiry agent must allow the accused the opportunity to defend himself, by the means and procedures established by law, in response to the charge brought against him, and must ensure that his personal and property rights are protected (section 2, art. 21 of the Code of Criminal Procedure of the Ukrainian SSR).

One of the most important means of safeguarding the legal rights and interests of the parties concerned, and of successfully preventing crime, is speedy investigation. In this regard, the legislation on criminal procedure calls for the prompt examination of cases, stipulating that a preliminary investigation should be completed within two months and that only in complicated cases or under exceptional circumstances may an investigation be extended beyond the prescribed period.

The case must be heard in court no later than 10 days, or in complicated cases no later than 20 days, from the date on which it comes before the court (art. 256 of the Code of Criminal Procedure of the Ukrainian SSR).

A hearing before a court of first instance is conducted in the presence of the defendant, whose appearance in court is obligatory. A hearing in absentia is permitted only under exceptional circumstances: (i) if the person indicted is outside the USSR and declines to come before the court; or (ii) if the case relates to a crime for which deprivation of liberty may not be assigned as a punishment and the defendant requests the hearing to proceed in his absence. However, the court is still entitled in such a case to rule that the person must appear (art. 262 of the Code of Criminal Procedure of the Ukrainian SSR).

During the judicial examination the person brought to trial has a number of rights, as set forth in article 263 of the Code of Criminal Procedure of the Ukrainian SSR, including the right to have a defence counsel or to undertake his own defence, to provide explanations regarding the substance of the case at any time during the hearing, and to file petitions.

If the defendant is not proficient in the language used in the proceedings (Ukrainian or the language of the majority population of the locality concerned), he is accorded the right to make statements, present evidence, file petitions, acquaint himself with all the materials of the case, address the court in his mother tongue and avail himself of the services of an interpreter. Investigative and judicial documents are provided to the accused in translation into his mother tongue or another language in which he is proficient. If the defendant does not know the language in which the judgement is rendered, an interpreter shall, following its prouncement, read out the judgement to him in his mother tongue or another language in which he is proficient (art. 341 of the Code of Criminal Procedure of the Ukrainian SSR).

No court, procurator, investigator or inquiry agent has the right to place the burden of proof on the accused. It is forbidden to exact evidence from an accused by force, threats or any other unlawful means (section 3, art. 22 of the Code of Criminal Procedure of the Ukrainian SSR). Confession of guilt by an accused may be used as the basis for an indictment only if the confession is supported by all the available evidence (section 2, art. 74 of the Code of Criminal Procedure of the Ukrainian SSR).

Coercion to obtain evidence during an interrogation by unlawful actions on the part of the person conducting an inquiry or preliminary investigation constitutes a criminal offence under article 175 of the Criminal Code of the Ukrainian SSR.

Justice in criminal cases is administered only by the courts and on the basis of the equality of citizens before the law and of court.

Criminal cases in all courts of first instance are heard by judges and people's assessors elected in accordance with the procedure established by law.

In all courts of first instance, cases are heard by a bench consisting of a judge and two people's assessors. The most serious and important cases will, in accordance with the new Fundamental Principles of the Legislation of the USSR and Union Republics on the Judicial System, be heard by a court of jurors or an enlarged panel of people's assessors. They will try cases relating to crimes which carry the death penalty or involve deprivation of liberty for more than 10 years.

In administering justice, judges and people's assessors are independent and subordinate only to the law. They decide cases on the basis of the law, and in accordance with the socialist sense of justice, under conditions which preclude any extraneous influence on the judiciary (art. 18 of the Code of Criminal Procedure of the Ukrainian SSR). The independence of judges and people's assessors is secured by appropriate rules of law. The USSR Act of 2 November 1989 on liability for contempt of court establishes criminal liability for interference in decisions on specific cases, threats or insults against judges or people's assessors, and non-execution of a judicial decision, as well as administrative liability for contempt of court, obstruction of the appearance in court of a people's assessor, or failure to act on a special ruling (or determination) by a court or submission by a judge calling attention to irregularities.

Hearings of cases take place in open court, except where this would be contrary to the interests of protecting State secrets. Closed hearings, however, are allowed on a reasoned decision from the court in respect of offences committed by persons under 16 years of age, sexual offences and other cases in order to prevent the disclosure of information concerning the private lives of persons involved in the case. Hearings in closed court are conducted in accordance with all the rules relating to judicial proceedings. Judgements are pronounced publicly in all cases (art. 20 of the Code of Criminal Procedure of the Ukrainian SSR).

The court is required to take all measures provided by law for a thorough, complete and objective analysis of the circumstances of the case and to elucidate both those circumstances which tend to incriminate or exonerate the defendant, and those which tend to mitigate or aggravate his liability (section 1, art. 22 of the Code of Criminal Procedure of the Ukrainian SSR). The court must avoid any bias towards conviction or acquittal.

The accused shall be deemed innocent until his guilt has been proven in accordance with the procedure established by law and confirmed by the entry into force of the court's judgement (art. 14-2 of the Fundamental Principles of the Legislation of the USSR and Union Republics on the Judicial System.

In reaching its judgement the court must, inter alia, decide whether the act of which the accused is charged was indeed committed, and whether that act contains the elements of a crime. If it does not the court shall render a judgement of acquittal.

The criminality and punishability of an act is determined by the law in force at the time when the act was committed (section 1 art. 6 of the Criminal Code of the Ukrainian SSR). A law which abolishes punishment or reduces the penalty for an act has retroactive force; that is, it also applies to acts committed before its promulgation. A law which establishes the punishability of an act or provides for a more severe penalty is not retroactive.

If criminal proceedings are discontinued because the occurrence of a crime is not established, the act in question does not contain the elements of a crime or the participation of the citizen in the crime is not proven, and likewise if a judgement of acquittal is rendered, the agency of inquiry, investigator, procurator and court are required to inform the citizen of the procedure for restoring his violated rights and to take the measures provided by law to compensate for the damage caused to the citizen as a result of wrongful conviction, prosecution or confinement under guard as a measure of restraint (art. 53 (1) of the Code of Criminal Procedure of the Ukrainian SSR).

URUGUAY

[Original: Spanish]
[10 February 1990]

Since the restoration of democracy, human rights apply in full throughout the Eastern Republic of Uruguay. Current constitutional and legal norms recognize the right not to be subjected to arbitrary detention (art. 7), the right not to be subjected to inhuman or degrading treatment (art. 26), the right to be heard (art. 16), the right to equality before the law (art. 8), and the right to a fair trial (art. 12 et seq). These human rights are suitably protected by the procedural guarantees essential under a democratic system, such as habeas corpus, enshrined in the Constitution, and the remedy of amparo, recently regulated by Act No. 16011 of 19 December 1988. In addition, since the democratically elected Government assumed power in 1984, no complaints of human rights violations have been received. Two marginal incidents were recorded during 1988 involving the criminal responsibility of police officers who made excessive and abusive use of their power. Consequently, once the facts had been verified by the legal authorities, the officials concerned were brought to trial and are currently serving prison sentences. The establishment of the rule of law in Uruguay has made unneccessary the adoption of prompt security measures specifically applicable to a state of emergency. In addition, in November 1989, free elections national and departmental were held in a climate of calm and full respect for all human rights.

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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-second session
Agenda item 10(a)

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

QUESTION OF THE HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Report of the Secretary-General containing information submitted by Governments pursuant to Sub-Commission resolution 7 (XXVII) of 20 August 1974

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EL SALVADOR

[31 May 1990]
[Original: SPANISH]

In compliance with the request of the Foreign Policy Department of the Ministry of Foreign Affairs in communication No. 4012, dated 15 March 1990 concerning the questionnaire on the "Question of the human rights of persons subjected to any form of detention or imprisonment" submitted by the Secretary-General of the United Nations pursuant to resolution 7 (XXVII) adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities on 20 August 1974, the following information is provided:

QUESTIONNAIRE

(a) The question of death during detention, extrajudicial executions and other arbitrary or summary executions, and international norms guaranteeing an impartial investigation.

(R) A minimum of medical care is required to be provided in rehabilitation centres and prisons and constant supervision must be maintained to ensure that inmates do not attempt to take their own life. We do not know whether extrajudicial or arbitrary or summary executions take place. On this point the Human Rights Commission might be able to provide information.

(b) Capital punishment, including execution of young offenders.

(R) The death penalty has been abolished in our legislation for ordinary crimes, as it is considered not to be consistent with the purpose of modern criminal law, which is to rehabilitate offenders rather than merely to punish them. As regards young offenders, the age of criminal responsibility is 16 years and persons of that age and over are subject to the punishment applicable to the crime or offence they commit. Persons below that age are protected under the Minors Code.

(c) Unacknowledged detention and forced or involuntary disappearance.

(R) The cases where a person may be deprived of liberty in conformity with the applicable laws are defined in article 13 of our Constitution. We have no knowledge of any cases of arbitrary detention.

(d) Torture and other cruel, inhuman or degrading treatment or punishment.

(R) Information under this heading could be sought from the Human Rights Commission.

(e) Detention and ill-treatment of members of vulnerable and other groups such as children, trade unionists, human rights defenders, members of parliament, journalists and peasants.

(R) This type of detention could be imposed where the persons mentioned under this heading have at a particular time through some act or omission infringed the laws, but they would be tried by the appropriate courts.

(f) Arrest and detention without grounds or on ill-defined or dubious grounds.

(R) This may occur in practice, but there is a legal procedure for determining, on the basis of the evidence, whether such detention is warranted or not. Abuse of authority can occur, but this situation is regulated in article 428 of the Penal Code.

(g) Administrative detention without charge or trial and other executive and preventive detention.

(R) Administrative detention is covered in our legislation and the Constitution provides that its duration shall not exceed 72 hours, within which period the person detained must be brought before the competent judge in accordance with the procedures under article 13, paragraph 2. Such detention may not be ordered except in accordance with the law or a relevant prior judgement.

(h) Restraints on the use of force by law enforcement officials.

(R) The form or procedures to be followed are regulated by the law. In the case of arbitrary action, the penalty established under article 428, mentioned above, referring to arbitrary acts, shall be applied to the official concerned.

(i) Coercion or intimidation of a detainee after release.

(R) If this occurs in practice, the Ministry is totally unaware of it.

(j) Privatization of prisons.

(R) This is not taking place in El Salvador, because, under our Constitution (art. 27, para. 3), the State organizes and is responsible for prisons.

IRAQ

[14 June 1990]
[Original: Arabic]

With regard to General Assembly resolution 44/162, in which reference is made to the prohibition of the imposition of the death penalty for crimes committed by persons below 18 years of age, under Iraqi law this penalty is not applicable to juveniles. This is because juveniles are subject to special legislation promulgated in the Juvenile Welfare Act, which makes provision for reform and rehabilitative measures which, in general, are not of a penal nature. In fact, article 79 of the Penal Code stipulates that, in the event of a person under 20 years of age committing an offence punishable by death, the criminal courts must commute the penalty to life imprisonment. This constitutes an evident legal safeguard for young persons between the ages of 18 and 20.

Iraqi law, as embodied in the principles set forth in the Constitution and the Penal Code, prohibits all forms of harsh treatment or torture of detainees and convicted persons. Such acts are punishable under the terms of articles 332 and 333 of the Penal Code. Moreover, the provisions of the Code of Criminal Procedure carefully safeguard the rights of accused persons at the stages of investigation and trial. Administrative detention is an exceptional short-term measure provided for by law. The Constitution and the law emphasize the independence of the judiciary and guarantee the full freedom and independence of lawyers. The law also provides for the application in penal institutions of the Standard Minimum Rules for the Treatment of Prisoners.

In accordance with the directives contained in the statutory instrument governing its operations, the Iraqi Department of Public Prosecutions has a direct responsibility to verify the legality of criminal proceedings against accused persons. It also has a clearly defined responsibility to inspect places of detention in order to ascertain that detainees are not being held in an arbitrary manner and to ensure that they are being provided with appropriate food and health care. The Human Rights Association in Iraq also plays an effective role in this connection through its educative endeavours to safeguard human rights.

With regard to Commission on Human Rights resolution 1990/81, concerning human rights in the administration of justice, the competent Iraqi authorities have not seen the draft model texts for national legislation or other measures for the effective implementation of international standards concerning human rights in the administration of justice. However, acquaintance with these texts could play a useful and positive role in the protection of human rights at the legislative level through a broadening of experience in this connection. They should therefore be studied with a view to deriving benefit from them. The achievement of this objective could be furthered by the provision of advisory services and training for the competent officials in matters relating to human rights in the administration of justice.

MALI

[23 April 1990]
[Original: FRENCH]

1. Our fundamental law, the Constitution of 2 June 1974 promulgated by Decree No. 03/PG-RM of 1 July 1974, incorporates the great principles of the Universal Declaration of Human Rights of 10 December 1948 and our various laws guarantee the individual and collective liberties of citizens (Nationality Code, Marriage and Guardianship Code, Labour Code, Penal Code, Code of Civil, Commercial and Social Procedure, Social Welfare Code etc).

2. The legitimate concern of the Sub-Commission on Prevention of Discrimination and Protection of Minorities at reports of the persistence of violations of fundamental human rights in various parts of the world is shared by the public authorities of Mali.

3. While such violations are a daily occurrence in certain countries, that is happily not the case in Mali, at least as far as we are aware.

4. The subjects of concern mentioned in the report of the Secretary-General containing information submitted by specialized agencies and intergovernmental organizations (E/CN.4/Sub.2/1989/21 and Add. 1), in the latest summary of information received from non-governmental organizations (E/CN.4/Sub.2/1989/22) and in the report of the sessional Working Group on Detention (E/CN.4/Sub.2/1989/29) do not exist in Mali, as these matters are provided for and are punishable by appropriate measures specififed in our positive law which guarantees everyone equality before the law and the right to defence of their interests.

5. The Government of Mali has always shared the Sub-Commission's concerns. In this connection, in conformity with the Universal Declaration of Human Rights of 10 December 1948, "everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law".

6. To this end the Constitution of 2 June 1974, provides for:

(1) Equal protection under the law without any discrimination (art. 1 of the Constitution);

(2) Prohibition of arbitrary detention or arrest (art. 7);

(3) The possibility of a public and fair hearing of one's case by an independent and impartial tribunal (art. 65 of the Constitution and art. 60 of the Code of Civil, Commercial and Social Procedure);

(4) Prohibition of torture or cruel, inhuman or degrading treatment;

(5) The right to be treated with humanity and respect for the inherent dignity of the human person.

7. Our various codes have also established other rights, including:

(a) The right to be informed of the grounds or motives for arrest or detention (art. 112 of the Code of Criminal Procedure);

(b) The right to be brought promptly before a court and to be tried within a reasonable time;

(c) The right to communicate with one's lawyer (art. 113 of the Code of Criminal Procedure);

(d) The right to be present at one's trial and to defend oneself in person or with the assistance of a lawyer of one's own choosing;

(e) The right to have examined witnesses against one and witnesses on one's behalf and to have the assistance of an interpreter if necessary (art. 105, paras. 1 and 4, of the Code of Criminal Procedure;

(f) The right to benefit from the principle of non-retroactivity of criminal law.

8. In brief, therefore, we can affirm without self-satisfaction or false modesty, that the Republic of Mali deliberately applies the fundamental principles of human rights. To our knowledge, none of the ten areas of concern listed in the last synopsis of material from non-governmental organizations (items (a) to (j)) exist in the case of Mali. Consequently the Government has no particular information to report to the Centre for Human Rights.